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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 CLYDE McKNIGHT, and  
11 JONATHAN RUSHING,

12 Defendants.

CR18-16 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable  
14 Thomas S. Zilly, United States District Judge:

15 (1) Defendant Clyde McKnight's motion to seal, docket no. 226, is  
16 GRANTED, and the exhibits filed by McKnight, docket no. 228, shall remain under seal.

17 (2) Defendant Clyde McKnight's "Motion to Re-Open Franks Hearing on  
18 Suppression Motion," docket no. 227, which is treated as a motion for reconsideration, is  
19 DENIED. In his continuing effort to challenge the validity of a tracking warrant obtained  
20 in November 2017, as well as subsequent related warrants, McKnight denies engaging in  
21 a drug transaction on September 19 or 20, 2017. See McKnight Decl. (docket no. 228-1).  
22 This issue was fully explored at the Franks hearing on February 20, 2019. In his affidavit  
23 in support of the tracking warrant, United States Drug Enforcement Administration  
Special Agent Kevin Palermo indicated that, in mid to late September 2017, investigators  
observed McKnight conduct "a suspected hand to hand transaction of narcotics" with an  
individual who later signed up as a confidential source ("CS-1"). See Ex. A to Def.'s  
Mot. to Suppress (docket no. 129-2). McKnight again attempts to impeach Special Agent  
Palermo by pointing out that the written reports of Seattle Police Detectives Stephen  
Knapp and Aaron McAuley, who conducted the surveillance at issue, do not explicitly  
mention a "hand to hand" transaction between McKnight and CS-1. The Court has  
already rejected this argument. See Order at 24 n.7 (docket no. 173). During the Franks  
hearing, Special Agent Palermo explained on both direct and cross-examination that he  
sought clarification from Detectives Knapp and/or McAuley about their observations

1 through in-person or telephonic conversations, and that his own hand-written notes are  
2 consistent with the information obtained in such manner.<sup>1</sup> *See* Tr. at 20:1-22:11, 119:8-  
3 10, 122:9-11, 125:2-16 (Feb. 20, 2019) (docket no. 220); *see also* Franks Hr’g Ex. B-18  
4 at Bates No. 009490 (indicating that “SPD CS (NOT A C/S @ TIME) MAKES BUY FROM  
5 MCKNIGHT - SPD OBSERVED DEAL”). McKnight’s self-serving declaration does not cast  
6 any doubt on the veracity of Special Agent Palermo, particularly in light of his failure to  
7 offer such testimony prior to or during the Franks hearing, when it could have been tested  
8 through the crucible of cross-examination. McKnight has made no offer of proof that  
9 either Detective Knapp or Detective McAuley would, if called as a witness, contradict  
10 Special Agent Palermo’s testimony. Indeed, the detectives are unlikely to do so given  
11 CS-1’s admission to them, when asked about the specific evening on which they saw him  
12 with McKnight, that he bought narcotics from McKnight. *See* Franks Hr’g Ex. B-2 at  
13 Bates No. 004034. Detective Knapp’s detailed notes about the interview of CS-1, and the  
14 statements attributed to CS-1, corroborate the representations made by Special Agent  
15 Palermo in the November 2017 tracking warrant affidavit concerning the observed “hand  
16 to hand” transaction. McKnight has shown no reason for the Court to revisit its ruling on  
17 his motion to suppress.

18 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of  
19 record.

20 Dated this 28th day of June, 2019.

21 William M. McCool  
22 Clerk

23 s/Karen Dews  
Deputy Clerk

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<sup>1</sup> On cross-examination, in response to a suggestion that his notes didn’t “say anything about observing hand-to-hand deals,” Special Agent Palermo replied, “Actually, it states, ‘On 9/19/17, the SPD CS was observed with McKnight.’ And then it says, ‘SPD observed deal.’” Tr. 122:7-11 (Feb. 20, 2019) (docket no. 220). The Court later inquired whether the notation “SPD observed deal” was “based on a telephone conversation” he had, and Special Agent Palermo indicated, “It was some sort of conversation with the SPD detectives, yes.” *Id.* at 125:11-16.